



Paul A. Smith – Karen Keene

2015 MEDICAL MARIJUANA UPDATE

COUNTY ADMINISTRATIVE OFFICERS
ASSOCIATION OF CALIFORNIA PRESENTATION



Key Aspects of Package

Local Control– Key Clauses

- Business & Professions Code 19315 (a)
- Business & Professions Code 19316 (a)
- Business & Professions Code 19316 (c)
- Health & Safety Code 11362.777 (b) (3)



Key Aspects of Package

Local Control Provisions:

- Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

Business & Professions Code 19315 (a)



AB 266



Key Aspects of Package

Local Control Provisions:

- Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

Business & Professions Code 19316 (a)



Key Aspects of Package

Local Control Provisions:

- Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

Business & Professions Code 19316 (c)



Key Aspects of Package

Local Control Provisions:

- A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

Health & Safety Code 11362.777 (b) (3)



Key Aspects of Package

- Explicit and broad county taxing authority
 - Referenced in Business & Professions Code 19348
- County authority to tax deliveries
 - Referenced in Business & Professions Code 19340 (c)
- Local fee and tax authority
 - Referenced in Business & Professions Code 19320 (d) & 19350



Key Aspects of Package

Ending the Collective Model – Strict Licensing Scheme

- Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

Business & Professions Code 19320 (a)



Key Aspects of Package

Environmental Enforcement

- Establishment of the Medical Cannabis Fines & Penalties Account
- Fine & penalty monies dedicated to state and local environmental enforcement efforts
- Bureau of Marijuana Regulation shall establish a grant program to locals for regulation/enforcement assistance
- Water diversion protections
- Cultivation standards

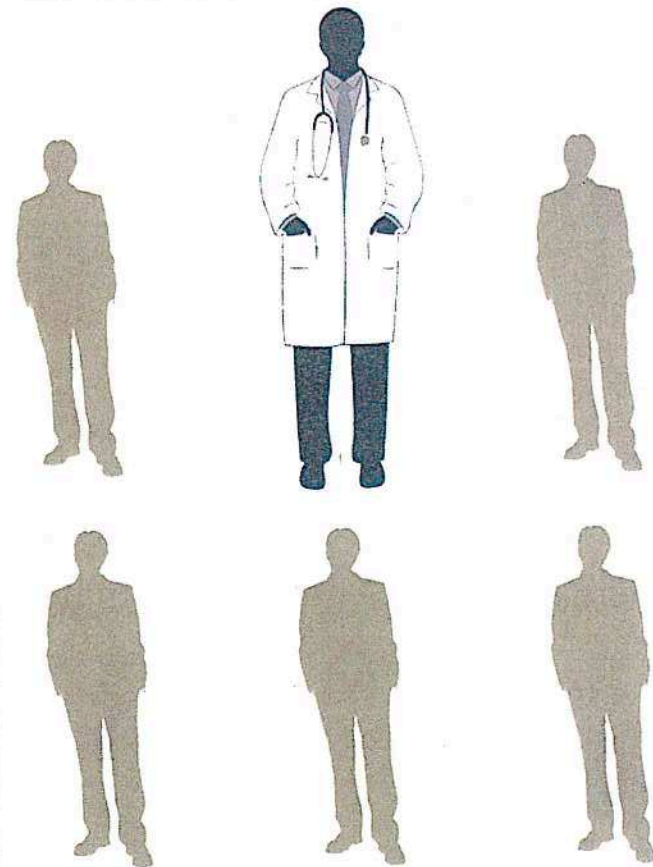


Key Aspects of Package

Licensure Exemptions



Personal Grows Exemption



Patient Caregivers Exemption



Key Aspects of Package

Local Control Applies To Those Exempt

- ...Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

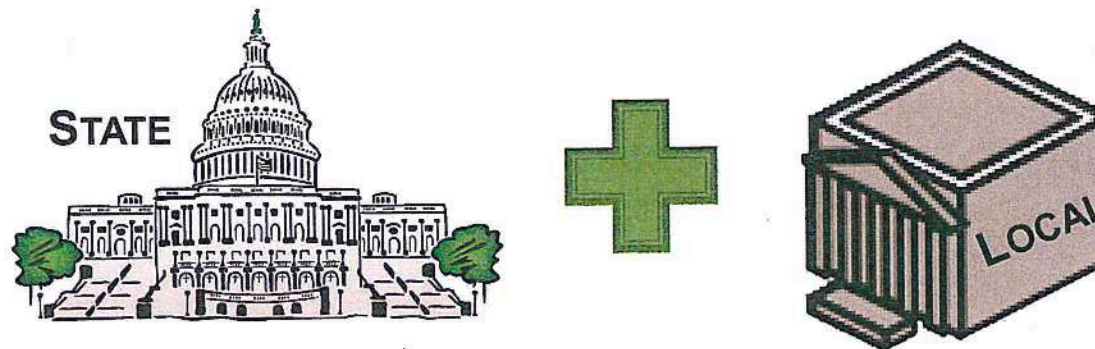


Health & Safety Code 11362.777 (g)



Dual Licensing

Must have both a state license & local approval to operate



Business & Professions Code 19320 (a)

AB 243, AB 266, SB 643



Locals Goes First for Cultivation

Cultivation applicants must first obtain local license/permit before commencing an application for a state cultivation license

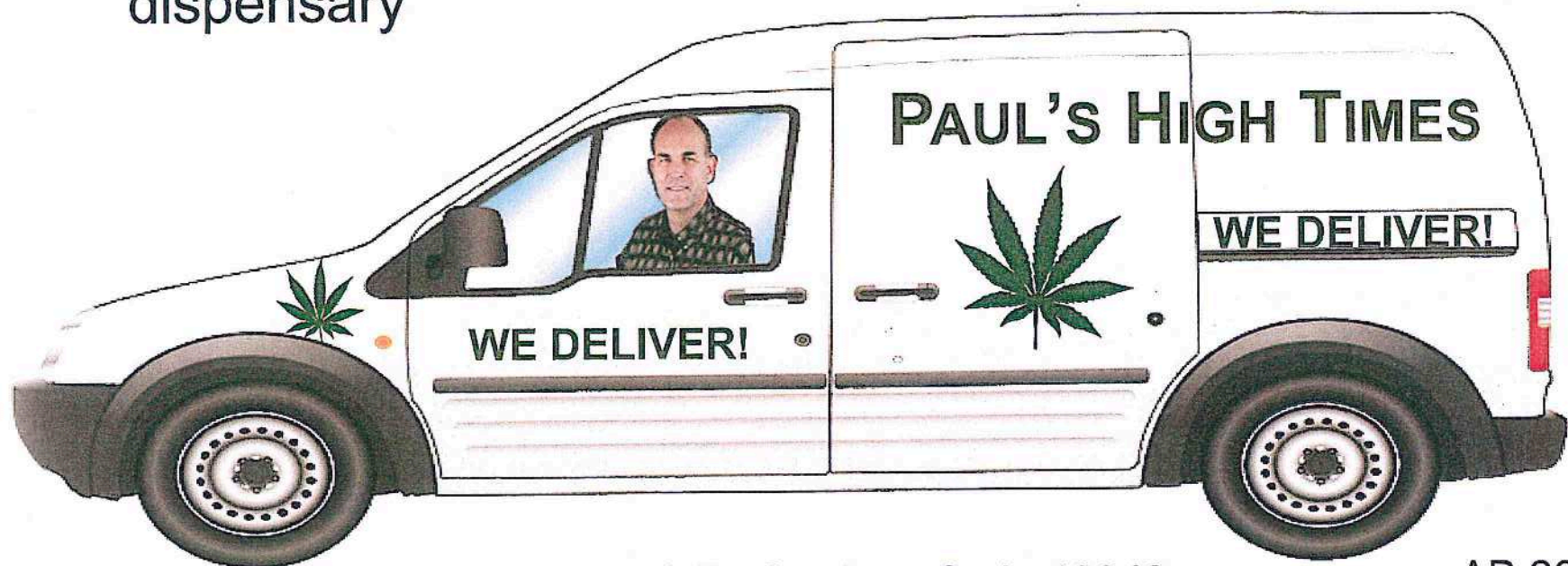


Health & Safety Code 11362.777 (b) (1)



Mobile Deliveries

- The default is that mobile deliveries are allowed
- Can only be prohibited by enactment of local ordinance
- Mobile delivery must originate from a licensed dispensary



Business & Professions Code 19340

AB 266



Cities Have the Option to Enforce State Standards

- “For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state.”

- Counties do not have explicit authority

Business & Professions Code 19316 (b)

AB 266



Other Relevant Aspects of the Legislative Package

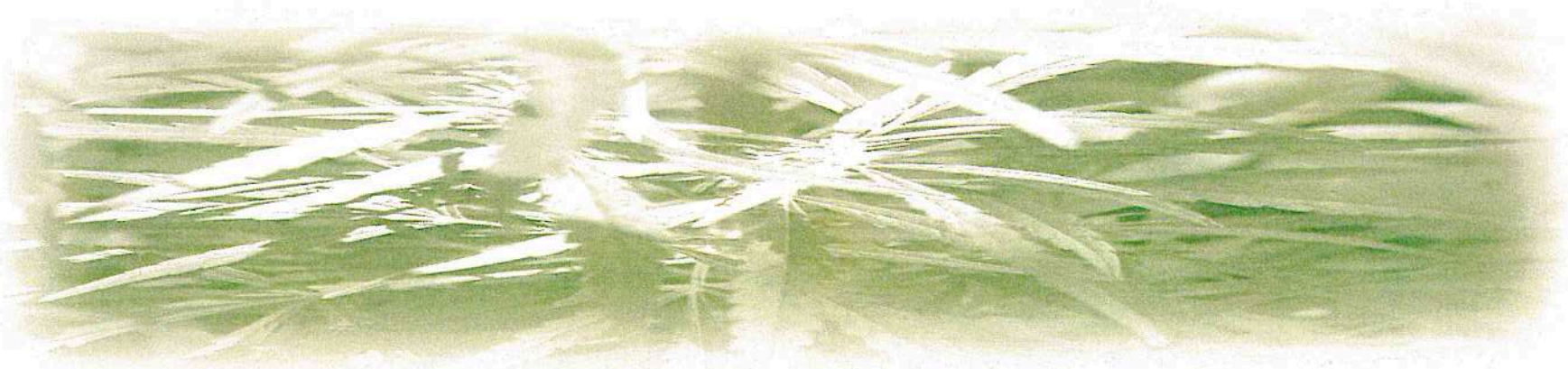
- Employer Restrictions
- Transportation Standards
- Pesticide Standards
- Cross-Ownership Restrictions
- Mandatory Distribution
- Removal of “(c) (4)” in AB 243



→ Includes March 1, 2016 Deadline re: cultivation
→ There may be attempts to ¹⁶remove this provision

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Questions?





RCRC MEDICAL MARIJUANA REGULATORY STRUCTURE LEGISLATION



Key County Issue	
Local Control	<p>Local control clauses Referenced in Business & Professions Codes 19315 (a), 19316 (a) & (c) AB 266</p> <p>Locals are responsible for awarding local licenses to operate Referenced in Business & Professions Code 19320 (a) AB 266 & SB 643</p> <p>Cultivation must comply with local rules Referenced in Health & Safety Code 11362.777 (b) (3) - AB 243</p> <p>Local fee and tax power Referenced in Business & Professions Code 19320 (d) AB 266 & SB 643</p>
County Taxing Authority	<p>Broad and explicit county taxing authority Referenced in Business & Professions Code 19348 - SB 643</p> <p>County authority to tax deliveries Referenced in Business & Professions Code 19340 (c) - AB 266</p> <p>Local fee and tax authority Referenced in Business & Professions Code 19320 (d) AB 266 & SB 643 Referenced in Business & Professions Code 19350 AB 243</p>

Licensing Entity

Local license issuance
Referenced in Business & Professions Code 19320 (a)
AB 266 & SB 643

Bureau of Medical Marijuana Regulation in Department of Consumer Affairs -
Primary state licensing entity
Referenced in Business & Professions Codes 19302, 19303, 19304
AB 266

California Department of Food & Agriculture has role in cultivation licensing
Referenced in Business & Profession Code 19302.1 (e) - SB 643
Referenced in Health & Safety Code 11362.777 (b) (1) (B) - AB 243

Cultivation licenses must first commence locally
Referenced in Health & Safety Code 11362.777 (b) (2) - AB 243

Department of Consumer Affairs issues licenses for dispensary, distributor,
transporter, special dispensary
Referenced in Business & Profession Code 19334 (a) - AB 266

Department of Public Health issues licenses for manufacturers/testing laboratories
Referenced in Business & Profession Code 19341 - AB 266

Environmental Enforcement

Establishment of the Medical Cannabis Fines & Penalties Account
Referenced in Business & Professions Code 19360 - AB 243

Fine & penalty monies dedicated to state and local environmental enforcement efforts

Referenced in Business & Professions Code 19351 (c) - AB 243

Bureau of Marijuana Regulation shall establish a grant program to locals for regulation/enforcement assistance

Referenced in Business & Professions Code 19351 (d) - AB 243

Water diversion protections

Referenced in Business & Professions Code 19332 (d)

AB 243 & SB 643

Cultivation standards

Referenced in Business & Professions Code 19332 (e) (2)

AB 243 & SB 643

Collective Model/Personal Grows

Abolishes collective model

Licensing requirements for all commercial cannabis activities

Referenced in Business & Professions Code 19320 (a) - AB 266 & SB 643

Referenced in Health & Safety Code 11362.775 (b) - AB 266

Personal grow exemption/Primary caregiver exemption for 5 patients

Referenced in Business & Professions Code 19319 (a) & (b) - SB 643

Those exempt must still comply with local restrictions

Referenced in Health & Safety Code 11362.777 (g) - AB 243

<p>Date of Licensure</p>	<p>After January 1, 2018 Referenced in Business & Professions Code 19321 (c) - AB 266</p>
<p>Detailed Regulatory Standards</p>	<p>Department of Consumer Affairs, California Department of Food & Agriculture & Department of Public Health have broad regulatory authority Referenced in Business & Professions Codes 19321 - AB 266</p> <p>California Department of Food & Agriculture responsible for cultivation regulations including weight and measures Referenced in Business & Professions Codes 19332 (a), 19332 (e) (1) AB 243 & SB 643</p> <p>Department of Pesticide Regulation & Department of Public Health develop pesticide standards Referenced in Business & Professions Code 19332 (b) - AB 243</p> <p>Annual license Referenced in Business & Professions Code 19321 (b) - AB 266</p> <p>Dispensary security standards Referenced in Business & Professions Code 19334 (c) & (d) - AB 266</p> <p>Testing laboratories Referenced in Business & Professions Codes 19343, 19344, 19345 AB 266</p>

<p>Transportation Standards</p>	<p>Transportation operators must be licensed Referenced in Business & Professions Code 19337 (a) - SB 643</p> <p>Detailed manifest/accessible records required Referenced in Business & Professions Codes 19337 (b), (c), (d) and (e) SB 643</p> <p>Bureau to develop minimum security requirement for transportation Referenced in Business & Professions Code 19334 (b) - AB 266</p>
<p>General Enforcement</p>	<p>Cities can request to be primary enforcement entity Referenced in Business & Professions Code 19316 (b) - AB 266</p> <p>State not required to enforce local standards Referenced in Business & Professions Code 19315 (b) - AB 266</p>
<p>Mobile Retail Deliveries</p>	<p>Permitted, <u>unless</u> prohibited by local ordinance Referenced in Business & Professions Code 19340 - AB 266</p>

<p>License Prohibitions (Criminal Record)</p>	<p>Previous criminal violations that could trigger failure to obtain state license: Felony illegal involvement in controlled substances Fraud, deceit & embezzlement Illegal patient recommendations Illegal cultivation activities Record of violations in last 3 years Specified serious felonies Specified violent felonies Failure to have tax registration Referenced in Business & Professions Code 19323 (b) (5) - SB 643</p>
<p>Local Involvement in License Revocation</p>	<p>Yes. Referenced in Business & Professions Code 19323 (b) (3) - SB 643</p>
<p>Advertising Restriction & Edibles Labeling</p>	<p>No advertising restrictions Edibles labeling requirements Referenced in Business & Professions Code 19347 - AB 266</p>
<p>Cross Ownership of Licensing</p>	<p>Extensive restrictions Referenced in Business & Professions Code 19328 - AB 266 No alcoholic beverage retailers can hold a medical marijuana license Referenced in Business & Professions Code 19329 - AB 266</p>

<p>Local Examination of Licensee's Records</p>	<p>Yes. Referenced in Business & Professions Codes 19327 (c) & (d) - AB 266</p>
<p>Employer Restrictions/Drug Free Workplace</p>	<p>Employers can adopt policies regarding employee use Referenced in Business & Professions Code 19330 - AB 266</p>
<p>Background Checks</p>	<p>Prospective licensees must submit to State Department of Justice background checks Referenced in Business & Professions Code 19322 - SB 643</p>
<p>Addresses Doctor/Patient Relationship</p>	<p>Facility/restrictions on financial interest Referenced in Business & Professions Code 2525(a) - SB 643</p> <p>Physician recommendation requirements Referenced in Business & Professions Code 2241.5 & 2525.3 - SB 643</p> <p>Physician advocating Referenced in Business & Professions Codes 2525.5 (a) & (b) - SB 643</p>

<p>Appellation/Organic Standards/Agricultural Product</p>	<p>California Department of Food & Agriculture shall establish organic program by 2020 Referenced in Business & Professions Code 19332.5 (a) - SB 643</p> <p>Bureau of Marijuana Regulation may establish appellations Referenced in Business & Professions Code 19332.5 (b) - SB 643</p> <p>County of origin labeling standards Referenced in Business & Professions Code 19332.5 (c) - SB 643</p> <p>Agricultural Product Referenced in Health & Safety Code 11362.777 (a) – AB 243</p>
<p>Criminal Penalties Statues</p>	<p>No criminal penalties if licensed Referenced in Business & Professions Code 19317 (a) & (b) - AB 266</p> <p>No license, then one is eligible to face criminal penalties Referenced in Business & Professions Code 19318 (a) & (c) - AB 266</p>
<p>Track & Trace/Unique Identification System</p>	<p>California Department of Food & Agriculture shall establish a unique identifier program Referenced in Business & Professions Codes 19335 (a), 19332 (e) (3) & (e) (4) AB 243 & SB 643</p> <p>Locals can administrate their own unique identifier program Referenced in Health and Safety Codes 11362.777 (e) (1), (e) (2), (e) (3), (e) (2) AB 243 & SB 643</p> <p>Board of Equalization for tax compliance associated with unique identifier program Referenced in Revenue & Tax Code 31020 - AB 266</p>

**State & Local Regulatory
Fee Authority**

Yes, explicit fee authority
Referenced in Business & Professions Code 19350 - AB 243